

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1264 of 1996

in

SPECIAL CIVIL APPLICATION No 11007 of 1995

with

civil application no. 9108 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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ELECTRICITY MAJDOOR SANGHARSH SAMITI

Versus

GOVERNMENT OF INDIA  
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Appearance:

MR AJ SHASTRI for Appellant  
MR MUKESH R SHAH for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

Date of decision: 12/08/1999

ORAL JUDGEMENT

This appeal is filed against summary dismissal of Special Civil Application No. 11007 of 1995 by the learned Single Judge on March 21, 1996.

Appellant was the original petitioner. It filed the above petition for appropriate writ, direction or order quashing and setting aside the notification dated November 16, 1995 issued under the Employees' Fund Scheme, 1995 and for a declaration that the same is unconstitutional, arbitrary, unjust and bad in law.

The matter was placed for hearing before the learned Single Judge. The learned Single Judge dismissed the petition only on the ground that the petitioner can approach Labour Court or Industrial Tribunal which can be said to be a proper forum under the Industrial Disputes Act, 1947 to adjudicate all such grievances.

When the matter was placed before us for admission, it was contended that the learned Single Judge has committed an error of law in not deciding the matter on merits. It was submitted that the scheme is statutory in nature inasmuch as it has been issued in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Act"). When legality and validity of such scheme is challenged on the ground that it is violative of the statutory and constitutional provisions, Tribunal could not decide the question. It was, therefore, obligatory on the part of the learned Single Judge to decide the same in accordance with law. After hearing learned advocate for the appellant, we had issued Notice on June 25, 1999 by directing the respondents to appear and make submissions with regard to admission as well as final hearing.

In pursuance of notice of admission as well as final hearing, both the respondents were served. Mr. M.R.Shah appears for respondent No.1.

From the facts and circumstances narrated hereinabove as also the points raised in the petition, in our opinion, the learned Single Judge should have decided the matter on merits. Since question of validity or otherwise of the scheme has been raised in the petition, the learned Single Judge ought not to have directed the appellant to approach Labour Court and/or Industrial Tribunal and decided the petition after considering the submissions of the parties.

Only on this ground, and without expressing anything on merits, LPA deserves to be allowed and is accordingly allowed. The order passed by the learned Single Judge is set aside and the office is directed to place Special Civil Application No. 11007 of 1995 before appropriate Court taking up such matters to decide the same on merits. LPA is accordingly disposed of. No order as to costs. No order on Civil Application.

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parekh